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AMERICAN HELLENIC INSTITUTE, INC.

December 23, 2019

WHITE PAPER

National Defense Authorization Act (NDAA) for Fiscal Year 2020: Prohibition on sales of US defense articles/services to the Republic of Cyprus (Cyprus)

SUMMARY

The National Defense Authorization Act (NDAA) was enacted on December 20, 2019. The NDAA sets forth a provision which retains and does not remove the prohibition on sales and transfers of US defense articles/services to the Republic of Cyprus (Cyprus). Under the NDAA, as enacted, sales of US defense/articles to Cyprus are and will continue to be prohibited, just as they have been since 1987.

The NDAA removes the statutory prohibition on sales of US defense articles/services to Cyprus. But the NDAA also directs the Secretary of State to retain Cyprus on the International Trade in Arms Regulations (ITAR), as it has been since 1987, unless Cyprus satisfies two conditions, (the Cyprus ITAR Conditions). The Cyprus ITAR Conditions are, one, that it continues to cooperate with the US in implementing anti-money laundering regulations and financial regulatory oversight, and, two, denies access to port facilities in Cyprus to Russian military vessels.

THE EASTERN MEDITERRANEAN SECURITY & ENERGY PARTNERSHIP ACT OF 2019 AS SET FORTH IN THE NDAA BY S. 1102 AND H.R. 2913

On April 10, 2019, Senator Menendez (D-NJ) introduced the Eastern Mediterranean Security & Energy Partnership Act of 2019 - S.1102. The Foreign Assistance Act of 1961 prohibits the sale of US defense articles/services to Cyprus, [620C(e)(1); 22 USC § 2373(e)(1)]. S.1102 added a provision which would remove the prohibition on any sales made to the Republic of Cyprus (Cyprus), as long as Cyprus is the end-user. Also, S. 1102 directed the Secretary of State to, in effect, to remove Cyprus from the International Trade in Arms Regulations (ITAR) list, (S. 1102, SEC. 5). AHI supported S. 1102 in this form.

On May 22, 2019, Representative Deutch (D-FL) introduced H.R. 2913, which was the same in relevant part as S. 1102. AHI issued an action alert which urged support for these bills because they unconditionally removed the prohibition by removing Cyprus from the ITAR.

THE NDAA AND THE CYPRUS ITAR CONDITIONS

On June 25, 2019, US Senator James Risch (R-ID), chairman of the Senate Foreign Relations Committee, introduced in the Foreign Relations Committee an amendment to S.1102 in the nature of a substitute. It was reported favorably out of the Committee on July 10, 2019 (Calendar No. 142). It retains the provision from the original S. 1102 which removed the *statutory prohibition* on the sale of US defense arms/services on Cyprus and does direct the Secretary of State, in effect, to remove Cyprus from the ITAR list. But, in stark contrast to the original S. 1102, the Risch substitute amendment mandates that the prohibition “*remain in place*”, *i.e.* Cyprus remains on the ITAR list, unless the President determines and certifies that the Government of Cyprus satisfies the following two conditions (S.1790 - Sec. 1270I (e)(1)(A-B):

A. "Continuing to cooperate with anti-money laundering"

However, in April 2019, Treasury Department Assistant Secretary Marshall Billingslea visited Cyprus and said that Cyprus has done outstanding work on money laundering. He said that Cyprus has made "enormous progress and improvements" in its legal framework as well as in law enforcement. Billingslea said after talks with Cyprus Finance Minister Harris Georgiades that the U.S. values its close partnership with Cyprus and looks forward to strengthening the ties. Further, Representative Maxine Waters (D-CA), chairwoman, House Committee on Financial Services, visited Cyprus in August 2019 and stated, "I am pleased to see that the close cooperation and coordination between the Republic of Cyprus and the United States is beginning to pay off. And while I would like to see additional progress toward detecting and stopping illicit financial activity, our discussions and meetings with our Cypriot hosts, for which we are grateful, leave us confident that Cyprus is up to the challenge."

B. "Deny access to Cyprus ports to Russian military vessels"

This condition is aimed at the 2015 agreement between Cyprus and Russia under which Russian naval vessels, which are involved in humanitarian and anti-terrorist activities, can use the port facilities of Cyprus. It is a matter of national sovereignty.

On July 11, 2019, Representative Cicilline (D-RI) and Representative Gus Bilirakis (R-FL) offered Amendment No. 27 to the NDAA in the Committee of the Whole of the House. The text of Amendment No. 27 set forth the Cyprus ITAR Conditions and they were inserted in the House version of the NDAA. Consequently, the NDAA as enacted sets forth the Cyprus ITAR Conditions so that sales of US defense articles/services to Cyprus are and remain prohibited, just as such sales have been since 1987.

CYPRUS AND THE INTERNATIONAL TRADE IN ARMS REGULATION (ITAR)

Congress has authorized the President to control the export and import of defense articles/services and to promulgate implementing regulations, [22 USC § 2778, 2751]. The President has delegated this authority to the Secretary of State, which has promulgated ITAR. The purpose of ITAR is to prohibit the transfer of US defense articles/services to countries which, in the opinion of the Secretary of State, will misuse them or use them in a manner which undermines peace, stability and US security interests. The prohibition applies to countries which fall into one or more of the following categories, [22 CFR § 126.1(c)]:

- A. The United Nations Security Council (UNSC) mandates that the country is subject to sanctions,
- B. The Secretary of State has determined that the country is a State Sponsor of Terrorism,
- C. The country is subject to an arms embargo or sanctions under a US law, or
- D. Whenever the transfer of defense articles/services to a country would not be "in furtherance of world peace and the security and foreign policy of the United States".

Among the countries on the ITAR list along with Cyprus are North Korea, Iran, Libya and Somalia. Cyprus is ranked with Zimbabwe. The only lawful reason for Cyprus to be on the ITAR list at all is if it falls into one or more of the foregoing categories.

Yet, as affirmed by Secretary of State Michael Pompeo, it is the policy of the US to increase cooperation with and support the efforts of Greece, Cyprus and Israel in the areas of energy independence and security and to defend against external malign influences in the Eastern Mediterranean and the broader Middle East. As have previous secretaries of state, Secretary Pompeo recognizes that Cyprus has a significant role in anti-terrorism and security efforts.

In a statement by the US Department of State in which the Secretary congratulated Cyprus on its Independence Day, the Secretary said in part: "Cooperation between the United States and the Republic of Cyprus is at an historic high. Our two countries are working closely together to expand commercial ties, develop natural resources, combat terrorism, improve maritime security, and promote stability in the Eastern Mediterranean region."

The Cyprus ITAR Conditions are at odds with the Sense of Congress set forth in the NDAA. The Sense of Congress states that "allowing the export, re-export or transfer of arms subject to the [ITAR] to Cyprus would advance United States security interests in Europe..." This clause makes it clear that Cyprus should not for any reason continue to be lumped with North Korea, Iran, Libya and Somalia. Either Cyprus will misuse US defense articles/services and undermine peace, stability and U.S. security interests and must remain on the ITAR list or Cyprus is a reliable ally which promotes regional stability and US security interests and must be off the ITAR list. It cannot be both.